



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants: N.E. Morrow et al.

Attorney Docket No. KMOR116839

Application No: 09/761,340

Group Art Unit: 3728

Filed: January 16, 2001

Examiner: J.T. Kavanaugh

Title: STEP-IN SNOWBOARD BINDING AND BOOT THEREFOR

APPELLANTS' APPEAL BRIEF

Seattle, Washington

April 7, 2003

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TO THE COMMISSIONER FOR PATENTS:

This brief is in support of a Notice of Appeal filed in the above-identified application on February 7, 2003, to the Board of Patent Appeals and Interferences appealing the decision dated October 7, 2002, of the primary Examiner finally rejecting Claims 57-61, 65, 68, 69, 72, and 97-102.

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I. REAL PARTY IN INTEREST

The real party-in-interest in the above-identified application is the assignee, K-2 Corporation, an Indiana corporation, having a place of business at 19215 Vashon Highway SW, Vashon, WA 98070.

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II. RELATED APPEALS AND INTERFERENCES

None.

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III. STATUS OF THE CLAIMS

Claims 57-83 and 97-102 are pending in the application. Of the above, Claims 62-64, 66, 67, 70, 71, and 73-83 are withdrawn from consideration. Claims 57-61, 65, 68, 69, 72, and 97-102 are appealed, and all stand rejected under 35 U.S.C. § 102. A copy of the claims on appeal, as currently amended, is included herewith as Appendix A.

IV. STATUS OF AMENDMENTS

This application is a divisional of prior Application No. 08/998,863, filed December 29, 1997. At the time of filing, a preliminary amendment was entered cancelling Claims 1-56. A second preliminary amendment and response to restriction requirement were filed on October 10, 2001, in response to the Office Action mailed on September 11, 2001. The second preliminary amendment was entered. Amendment A was filed on February 6, 2002, in response to the first Office Action mailed on November 6, 2001. Amendment A has been entered. Amendment B was filed on April 15, 2002, with a Request for Continued Examination in response to the final Office Action mailed on February 15, 2002. Amendment B has been entered. Amendment C was filed on September 3, 2002, in response to the Office Action mailed on May 6, 2002. Amendment C has been entered. An Amendment After Final was filed on January 7, 2003, in response to the final Office Action mailed on October 7, 2002. The Amendment After Final has not been entered.

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## V. SUMMARY OF THE INVENTION

The present invention provides a forward-lean system for a snowboard boot. A "Forward-Lean System" is a term of art that is recognized by persons skilled in the art and is applied to a device arranged to provide a controlled amount of forward-lean in a boot, i.e., meaning the portion of the boot around the lower leg is controlled either to increase or reduce the angle of leaning. Forward-Lean System is used because, to Appellants' knowledge, no other term exists in the English language to refer to such device.

A certain amount of forward-lean is desirable in skiing or snowboarding. The present invention incorporates a novel forward-lean system in boots. Conventional forward-lean systems have medial and lateral straps, each on respective medial and lateral sides of the boot. In conventional forward-lean systems, the medial and lateral straps are connected to the forward portion of the boot at the same side on the boot from which the strap originated. Therefore, a conventional snowboard boot has a medial side strap connected to the forward portion of the boot at the medial side of the boot, and a lateral side strap connected to the forward portion of the boot at the lateral side of the boot. The present invention provides an improved configuration that brings both the medial and the lateral side cords to a single connection point or region on one side of the boot. This provides the boot with improved flexing properties when riding. *See* p. 17, lines 12-21 of the present application. One embodiment of the boot provides both cords coming from the upper rear boot portion connecting to a single connection point or region on the medial side of the boot. The embodiment is illustrated in FIGURE 3 of the present application. In this embodiment, medial and lateral cord portions from the upper rear portion of the boot connect to a single connection point 140 at one side of the boot at the front. FIGURE 3 also shows that the medial and lateral cord portions to a tensioning member 122 at the rear of the boot. As the tensioning member 122 is moved in the direction indicated by arrow 124, tension is

applied to the cords from both sides of the upper rear portion of the boot, but the front tension is applied to the single connection point on one side of the boot, rather than at the two sides, thus, causing the boot to lean forward depending on the amount of tension applied.

In view of this explanatory description, the claims may now be more readily understood. Independent Claim 57 is directed to a boot that has a forward-lean system. The forward-lean system of the boot includes medial and lateral side cable members on the boot, wherein the cable members are attached to the forward portion of the boot at only one general position thereon. The embodiment of Claim 57 further includes a tension adjustment member connected to the cable members. Claims 58-61 further define the embodiment of Claim 57. In particular, Claim 58 further defines the medial and lateral cable members attaching to the forward portion of the boot on a single side of the boot.

Independent Claim 65 is directed to a boot, also including a forward-lean system having both a medial and lateral cable that attach to a front portion of the boot at only one general position thereon. Claims 68, 69, and 72, further define the embodiment of Claim 65.

Independent Claim 97 is directed to a boot, also including a forward-lean system. The forward-lean system has a single general area on the boot that attaches to both the medial and lateral cable portions coming from the respective rear upper opposite sides of the boot. The single general area is located at a lower, front location on the boot. Claim 98 further defines the embodiment of Claim 97.

Independent Claims 99, 100, and 101 are directed to a snowboard boot, also including a forward-lean system. In the embodiments of Claims 99, 100, and 101, the forward-lean system includes a first guide located on a side of the boot on an upper rear portion of the boot. The boot includes a second guide located on the same side as the first guide on a lower, front portion of the boot. The boot includes a third guide located on the side opposite the first guide on the upper,

rear portion of the boot. The boot includes a first cable portion extending from the first guide to the second guide, and a second cable portion extending from the second guide unrestrained to the third guide. Thus, the embodiments of Claims 99, 100, and 101 accomplish a forward-lean system wherein the lateral and medial cables attach to a single connection point, i.e., the second guide on the forward portion of the boot.

Independent Claim 102 is directed to a boot including an upper rear portion, a lower front portion, and a forward-lean system that comprises cables from either side of the upper, rear ankle portion that are attached to the lower front foot position. In the embodiment of Claim 102, the cables apply a forward-leaning force to the boot's upper ankle portion from only a single general position.

#### VI. ISSUES PRESENTED FOR REVIEW

- (1) Whether Claims 58, 59, 68, and 97-102 are indefinite under 35 U.S.C. § 112.
- (2) Whether Claims 57, 58, 60, 61, 65, 68, 69, 72, 97, 98, and 102 are anticipated under 35 U.S.C. § 102(b) by U.S. Patent No. 5,060,403 (hereinafter "Battistella").
- (3) Whether Claims 57-59, 65, 68, and 69 are anticipated under 35 U.S.C. § 102(b) by U.S. Patent No. 4,360,979 (hereinafter "Spademan").
- (4) Whether Claims 99-101 are anticipated under 35 U.S.C. § 102(b) by U.S. Patent No. 4,969,278 (hereinafter "Ottieri").

#### VII. GROUPING OF CLAIMS

All of the pending claims set forth in Appendix A share certain points of patentability over the cited references. Thus, for example, each of the claims is directed to a boot, including a forward-lean system with a lateral and medial cord on either side of the boot that converge to a single location at the front of the boot.

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However, while all of the claims share certain characteristics in common, each of the claims is believed to be separately patentable on the basis of the differences set forth above in the summary of the invention, as well as other differences noted in the argument below.

For example, each of Claims 57-61, 65, 68, 69, and 72 are directed to a boot having at least a forward-lean system that has medial and lateral cable members on the boot, wherein the cable members are attached to the forward portion of the boot at only one general position.

Claims 99-101 are directed to an embodiment of the boot wherein the forward-lean system has the single connection enabled through the use of guides located on opposite sides of the upper rear portion of the boot and a single guide on one side located at a lower forward front portion of the boot.

Claims 97, 98, and 102 are directed to a boot with cables coming from the respective lateral and medial sides of the boot, where the cables are connected to a single general area at the front of the boot.

For these reasons, and other differences addressed below and contained in the claims, each claim is believed to stand separately.

#### VIII. ARGUMENT

##### A. Rejection of Claims 58, 59, 68, and 97-102 Under 35 U.S.C. § 112

Claims 58, 59, 68, and 97-102 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Appellants regard as the invention.

The Office Action states that with regard to Claims 99, 100, and 101, the term "unrestrained" is unclear, inaccurate, and indefinite, because the cable or the cable portion as claimed is under tension and, therefore, is not unrestrained at any portion of the cable. *See* the Office Action of October 7, 2002, p. 2 (hereinafter "Office Action"). In this regard, M.P.E.P.

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§ 2173.02, on clarity and precision, states that the Examiner's focus during an examination of claims for compliance with the requirement for definiteness of 35 U.S.C. § 112, second paragraph, is whether the claim meets the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available. In reviewing a claim for compliance with 35 U.S.C. § 112, second paragraph, the Examiner must consider the claim as a whole to determine whether the claim apprises one of ordinary skill in the art of its scope and therefore serves the notice function required by 35 U.S.C. § 112, second paragraph. *See, for example, Solomon v. Kimberly-Clark Corp.*, 216 F.3d 1372, 1379, 55 USPQ2d 1279, 1283 (Fed. Cir. 2000). Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the Examiner might desire. *See* M.P.E.P. § 2173.02. Claims 99, 100, and 101 meet the standard articulated in *Solomon* because the claims recite that the cable portions extend from guide to guide unrestrained. Thus, for example, in Claim 99, the cable portion extending between the second to the third guide is unrestrained. The term "unrestrained" is understood when read in the context of the claim. The scope and meaning of the claims is evident when taken in the context of the specification and FIGURES 1 and 3, in particular, showing the cable portion extending from guide 140 to guide 132 with no other intervening guides. The Examiner's construction of the meaning of unrestrained is contrary to the language of the claims. Thus, Claims 99-101 are not indefinite.

With respect to Claim 97, the Examiner incorrectly construes the claim to mean that the forward-lean system is attached to the medial and lateral cable portions. Thus, the Examiner concludes that the cable portions are not part of the forward-lean system. The reading of the claim is again inconsistent with the specification and contrary to the plain meaning of the claim. The term "attaches" is modifying the term "area" and not the "forward-lean system." Thus, it is the single general area on the boot that is attached to the medial and the lateral cable portions.

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With respect to Claim 68, the Examiner states that it is unclear to what the first and second locations are referring. Claim 68 is reasonably clear that the locations to which the claim refers comprise the general position to which the medial and lateral cables are attached. Thus, for example, FIGURE 36 of the present application shows that the medial and lateral cables are attached at only one general position, but at two locations 236, and 238 within that general position. The scope of Claim 68 is therefore fully ascertainable.

With respect to Claims 58, 59, and 97, the Examiner finds these claims unclear because the Examiner cannot see how the lateral side cable can be a lateral cable if a portion of the cable crosses sides so that a portion is on the medial side of the boot. Claim 58 recites that the forward portion of the lateral side cable is attached at a single side of the boot, which can be the medial side. Claim 58 is reasonably clear to one of ordinary skill because one can ascertain that the rear portion of the lateral side cable can remain at the lateral side of the boot while only the forward portion of the cable crosses to the medial side of the boot.

B. Rejection of Claims 57, 58, 60, 61, 65, 68, 69, 72, 97, 98, and 102 Under 35 U.S.C. § 102(b)

Claims 57, 58, 60, 61, 65, 68, 69, 72, 97, 98, and 102 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,060,403 to Battistella. The Examiner states that Battistella teaches several embodiments of the ski boot having a structure substantially as claimed, including a forward-lean system. The Examiner states that Figure 1 of Battistella shows the front and rear quarters of the boot in a forward-lean position relative to the shell, comprising medial and lateral side cables that cause forward flexing of the boot. *See* the Office Action, p. 3. The Examiner states that the cables of Battistella extend on both sides of the boot and therefore would include the medial side of the boot. *See* the sentence bridging pages 3 and 4 in the Office Action. The Examiner states that the cables are all attached to the forward portion of the boot at

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only one general position. The Examiner identifies the position as the opening referenced as numeral 9. *See* the Office Action, p. 4.

In relevant part, Claims 57, 65, 97, and 102, recite that cables from the lateral and medial sides of the boot are attached to the front portion of the boot at only one general position thereon. In subsequent embodiments, the one general position is on the medial side of the boot. Appellants believe the Examiner's characterization of Battistella is incorrect. Battistella does not have both a lateral and medial cable attached to the front portion of the boot at only one general position. FIGURE 1 of Battistella shows a cable 6 that is connected to the vertical lever 5, then guided to a first guide member 7 on the rear quarter 4 and at a second guide member 8 on the front quarter 3, and is then inserted in the front quarter 3 at an adapted opening 9, provided at the front edge 10 of the front quarter. *See* Col. 3, lines 43-48 of the Battistella reference. FIGURES 1-4 and the passage noted above, describe only a single cable on only one side of the boot, in direct contrast to the claims having both a medial and a lateral cable. For at least this reason, Battistella does not anticipate Claims 57, 58, 60, 61, 65, 68, 69, 72, 97, 98, and 102.

Furthermore, Appellants believe the Examiner is incorrectly attributing purely functional significance to the recited element of a "forward-lean system." Thus, the Examiner concludes this element is present in Battistella if a boot simply moves forward under the weight of a user (*See* Col. 4, lines 27-43 of Battistella) or if the boot is initially forward-leaning (*See* the Office Action, p. 3). The Examiner has not correctly construed the meaning of the claim terms. "The criterion is the meaning of words as they would be understood by persons in the field of the invention." *See* Verve LLC v. Crane Cams, Inc., 65 USPQ 2d 1051, 1053 (Fed. Cir. 2002).

The meaning of terms in claims must be given their broadest reasonable interpretation, consistent with what persons who are skilled in the art would attribute to those terms. M.P.E.P. § 2111; M.P.E.P. § 2111.01; *In re Sneed*, 710 F.2d 1544, 218 USPQ 385 (Fed. Cir. 1983); *see In*

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*re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999). Furthermore, the broadest reasonable interpretation must be consistent with the specification. M.P.E.P. § 2111. As described in the summary section of this Appeal Brief, forward-lean system refers to a device specifically constructed to cause forward-lean of the rear, upper portion of the boot. The meaning attributed to the forward-lean system element by the Examiner would not be the meaning attributed by one of ordinary skill in the art in the field of the invention. Appellants believe the element "forward-lean system" is recitation of structure having a defined connotation to those who are skilled in the art. Thus, the device described as a forward-lean system is not present in Battistella.

Battistella describes an adjustable closure device, particularly used for ski boots of the rear entry type. *See* Col. 1, lines 6-7 of the Battistella reference. In actuality, the system of Battistella is to tension the front and rear quarters about the skier. This action is enabled by cable 6 that operates a ratcheting mechanism so that by flexing the leg forward, a tooth interacts with a lug 12. The boot includes at least three parts: a front quarter, a rear quarter, and a shell, characterized in that the boot comprises a tensioning means for actuating at least one traction element. The traction element connects at least two parts of the ski boot. The two parts are in relative motion when a skier flexes his/her leg inside the boot, and at least one of the quarters has a stop element for engagement with the shell when the skier extends his/her leg. A release means is provided for disengaging the quarter from the shell; and for setting the ski boot in a walking position, means are also provided for an automatic tensioning of the traction element when the skier flexes his/her leg forwardly. *See* Col. 2, line 55-Col. 3, line 2 of the Battistella reference. Further evidence of Appellants' position was supported by the declaration of Anthony O. DeRocco, accompanying the nonentered Amendment After Final, declaring that Battistella does not have a forward-lean system, contrary to the Examiner's position.

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Therefore, for all the foregoing reasons, Battistella does not anticipate Claims 57, 58, 60, 61, 65, 68, 69, 72, 97, 98, and 102.

C. Rejection of Claims 57-59, 65, 68, and 69 Under 35 U.S.C. § 102(b)

Claims 57-59, 65, 68, and 69 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,360,979 to Spademan. The Examiner states that Spademan teaches a ski boot having structure substantially as claimed, including causing forward flexing of the boot. In support of this statement, the Examiner references Col. 5, lines 42-49 of the Spademan reference. The Examiner also provided a marked-up copy of the front page of the Spademan reference with the Office Action, purportedly showing the claim elements.

Claims 57 and 65 recite having a medial and lateral side cable member. Spademan does not have a medial and a lateral cable, as recited in Claims 57 and 65. In direct contrast, Spademan has cables coming from only one side of the boot. Thus, Spademan has either two lateral cables or two medial cables, depending on whether the boot is for a right or left foot. Accordingly, Spademan does not describe both a medial and a lateral side cable member attached to a front portion of the boot at only one general position thereon. As shown in the marked-up front page of the Spademan patent, provided by the Examiner, as part of the Office Action, the purported lateral side cable member and the medial side cable member originate from the same side and converge at the buckle on the medial side, and therefore, cannot be a medial and a lateral cable. Spademan fails to at least describe both a medial and a lateral cable member on the boot. For at least this reason, Spademan does not anticipate Claims 57-59, 65, 68, and 69.

Furthermore, as with Battistella, the Spademan reference does not have a forward-lean system. The system of Spademan is a dynamically adjustable cuff that responds to forward movement of the leg. Spademan is directed to a sport shoe with a cuff and means that are responsive to forward-lean, where said means are coupled with said cuff means for tightening

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said cuff means about a leg enclosed thereby. *See* the Abstract. For example, Spademan describes that the amount of tightening of the cuff about the leg increases by leaning forward and decreases by leaning backward. *See* Col. 4, line 6 through Col. 5, line 13. In Spademan, any leaning motion is attributable to the user.

The Examiner attributes only functional significance to the claim element "forward-lean system." For the reasons indicated above in regard to the rejection under Battistella, Appellants believe the Examiner's claim construction is incorrect. The meaning of terms in a claim must be the meaning that a person in the field of the invention would understand the term to mean. A forward-lean system denotes a structure not described by Spademan.

Therefore, for all the foregoing reasons, Spademan does not anticipate Claims 57-59, 65, 68, and 69.

D. Rejection of Claims 99-101 Under 35 U.S.C. § 102(b)

Claims 99-101 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,969,278 to Ottieri. The Examiner states that Ottieri teaches a ski boot having structure substantially as claimed, and provides marked-up copies of FIGURES 1 and 2 from the Ottieri reference, purportedly showing the recited claim elements.

Claims 99-101 recite in relevant part, a first guide located on a side of the boot on an upper, rear portion of the boot; a second guide located on the same side as the first guide on a lower, front portion of the boot; and a third guide located on the side opposite the first guide on an upper, rear portion of the boot.

With reference to the marked-up Figure 1 of Ottieri provided by the Examiner, Appellants note that the second guide, indicated by the Examiner as being located on a lower front portion of the boot, is more closely aligned in height with the first guide that is located on the upper portion of the boot. Furthermore, from the marked-up Figure 2, also provided by the

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Examiner, the second guide straddles the midway point between the first guide and the third guide, and thus the second guide is clearly not on the same side as the first guide. For at least these reasons, Ottieri does not anticipate Claims 99-101.

Furthermore, Claims 99-101 also recite in relevant part a forward-lean system. The meaning of terms in a claim must be the meaning that a person in the field of the invention would understand the term to mean. Ottieri does not describe a forward-lean system. In direct contrast to Appellants' invention, the Ottieri reference describes a rear-entry ski boot having a variable-volume inner shell. *See* Col. 1, lines 65-67 of the Ottieri reference. The ski boot of Ottieri includes a rigid outer shell and an inner shell that is relatively flexible. The inner shell has a relatively flexible saddle region, which extends over the metatarsal and/or instep portions of the wearer's foot. Tensile elements, such as cables or straps, cooperate with the saddle to provide a variable supporting force to the wearer's foot. The tensile elements extend from the saddle, under the sole of the inner shell and terminate on the heel spoiler. This construction enables a foot-supporting tensioning force to be applied to the tensile elements by pivoting the heel spoiler to the closed position. *See* the Abstract. Accordingly, Ottieri does not describe a forward-lean system. For the reasons indicated above in regard to the rejection under Battistella, Appellants believe the Examiner's claim construction is incorrect.

For all the foregoing reasons, Ottieri does not anticipate Claims 99-101.

#### IX. CONCLUSION

In view of the above remarks, Appellants respectfully submit that each of Claims 57-61, 65, 68, 69, 72, and 97-102 is patentable over the references of record. A decision reversing the Examiner's rejections and finding all pending claims to be in condition for allowance is respectfully requested.

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X.     APPENDIX OF CLAIMS

57.     A boot, comprising:

        a forward-lean system, comprising:

            medial and lateral side cable members on the boot, wherein the cable members are attached to the forward portion of the boot at only one general position thereon; and

            a tension adjustment member connected to the cable members for altering the length of said cable members, to provide more or less forward-lean of the boot relative to a vertical line.

58.     A boot according to Claim 57, wherein forward portions of said medial and lateral side cables attach to a forward portion of the boot on a location at a single side of the boot.

59.     A boot according to Claim 58, wherein said location is on a medial side of the boot.

60.     A boot according to Claim 57, wherein said tension adjustment member comprises an engaging arm pivotally attached to a rear portion of the boot.

61.     A boot according to Claim 60, wherein said arm includes plural engaging members for selective engagement of said cables to lengthen or shorten the effective length of the cables.

65.     A boot, comprising:

        a forward-lean system, comprising:

            medial and lateral side cable members on the boot, wherein said medial and lateral side cable members attach to a front portion of the boot at only one general position thereon.

68.     A boot according to Claim 65, wherein said portion comprises first and second locations that are substantially adjacent each other.

69.     A boot according to Claim 65, wherein said portion comprises a substantially single position.

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72. A boot according to Claim 65, wherein said medial and lateral side cable members comprise portions of a continuous cable and wherein said cable loops back from the medial side to the lateral side of the boot around a loop back member at a front portion of the boot.

97. A boot, comprising:

a forward-lean system having a single general area on the boot that attaches to medial and lateral cable portions coming from respective rear upper opposite sides of the boot, said single general area located at a lower front location on the boot.

98. The boot of Claim 97, wherein the single general area is located at either the lateral or medial side of the boot.

99. A snowboard boot, comprising:

a forward-lean system, comprising:

a first guide located on a side of the boot on an upper, rear portion of the boot;

a second guide located on the same side as the first guide on a lower, front portion of the boot;

a third guide located on the side opposite of the first guide on an upper, rear portion of the boot;

a first cable portion extending from the first guide to the second guide; and

a second cable portion extending from the second guide unrestrained to the third guide.

100. A step-in snowboard boot, comprising:

a forward-lean system, comprising:

a first guide located on a side of the boot on an upper, rear portion of the boot;

a second guide located on the same side as the first guide on a lower, front portion of the boot;

a third guide located on the side opposite of the first guide on an upper, rear portion of the boot; and

a cable portion that extends unrestrained from the first guide to the second guide and extends unrestrained from the second guide to the third guide.

101. A step-in snowboard boot, comprising:

a forward-lean system, comprising:

a tension adjustment member at the rear of the boot;

a first guide located on a side of the boot on an upper, rear portion of the boot;

a second guide located on the same side as the first guide on a lower, front portion of the boot;

a third guide located on the side opposite of the first guide on an upper, rear portion of the boot; and

a cable portion that extends from the tension adjustment member to the first guide, the cable extends unrestrained from the first guide to the second guide, and extends unrestrained across the front of the boot unrestrained from the second guide to the third guide, the cable portion extends from the third guide to the tension adjustment member.

102. A boot, comprising:

an upper rear ankle portion;

a lower front foot portion; and

a forward-lean system, comprising:

cables from either side of the upper, rear ankle portion attached to the lower front foot portion, said cables for applying a forward-leaning force to the boot upper ankle portion from only a single general position.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited in triplicate with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to the U.S. Patent and Trademark Office, P.O. Box 2327, Arlington, VA 22202, on the below date.

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